

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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Mary Jane Beauregard and John Hugh
 Smith,

Case No. 2:20-cv-02123-KJD-DJA

Plaintiffs,

Order

v.

Clayton Sampson, et al.,

Defendants.

This is a fraud action arising out of Plaintiffs' \$100,000 investment into EnvyTV, LLC—a multi-level marketing company. Plaintiffs Mary Jane Beauregard and John Hugh Smith sue Defendants Clayton Sampson; Elisha Sampson; EnvySolutions, LLC; and EnvyTV claiming that the Sampsons—as majority owners and co-managers of EnvyTV—failed to acknowledge Plaintiffs' ownership interests in the company after they invested. Instead, Plaintiffs claim that the Sampsons recreated the business operations of EnvyTV through EnvySolutions¹ to cut Plaintiffs out of the business.

Plaintiffs previously moved to compel further responses by Defendants to Plaintiffs' discovery requests. (ECF No. 36). The Court granted that motion in part, found attorneys' fees and costs warranted, and ordered the parties to attempt and agree on the amount of attorneys' fees and costs. (ECF No. 42). About a month after that order, Plaintiffs' attorneys moved to withdraw, which motion the Court granted. (ECF No. 48).

Plaintiffs now move for sanctions, arguing that Defendants failed to provide compelled responses to discovery or agree to attorneys' fees. (ECF No. 52). Defendants did not respond. The Sampsons later explained that they wished to proceed *pro se* and could not afford to retain

¹ EnvySolutions is no longer a party to this lawsuit. (ECF No. 6).

1 counsel for EnvyTV. (ECF Nos. 50, 55). Because the Court finds that Defendants have not
2 complied with the order compelling discovery, it grants Plaintiffs motion for sanctions in part and
3 orders Defendants to show cause why sanctions are not warranted. The Court also orders
4 Defendants to show cause why default should not be entered against EnvyTV for failing to appear
5 in court through an attorney.

6 **I. Background.**

7 The Court granted Plaintiffs' motion to compel in part on December 13, 2021. (ECF No.
8 42). It found that Plaintiffs were entitled to their attorneys' fees and encouraged the parties to
9 agree on an amount. (*Id.* at 11). About a month later, counsel for Defendants moved to
10 withdraw, which motion the Court granted (ECF No. 48). The Court explained that Defendants
11 Clayton Sampson and Elisha Sampson would have about thirty days to inform the Court whether
12 they would retain new counsel or proceed *pro se*. (*Id.* at 2-3). However, it required that EnvyTV
13 retain counsel if it intended to continue litigating the matter because corporations can only appear
14 in Court through an attorney. (*Id.*).

15 Defendants moved to file electronically and requested to proceed *pro se* on February 28,
16 2022. (ECF Nos. 50 and 51). The Court granted the Sampson's request to file electronically and
17 proceed *pro se*, but again reminded them that EnvyTV must appear through an attorney. (ECF
18 No. 51). The Sampsons eventually explained that they "are unable to retain affordable counsel
19 for EnvyTV, LLC and Envy Solutions [sic]." (ECF No. 55).

20 In the interim, Plaintiffs moved for case ending sanctions or, in the alternative, for an
21 order for Defendants to show cause why case terminating sanctions are not warranted. (ECF No.
22 52). They explain that, after the order compelling discovery responses and for the parties to meet
23 and agree on attorneys' fees, Plaintiffs' counsel contacted Defendants' counsel twice to attempt to
24 meet and confer, but Defendants' counsel did not respond. (*Id.* at 4).

25 Plaintiffs' counsel avers to later have had a phone call with Clayton Sampson—then
26 acting *pro se*—and told him that Plaintiffs intended to bring a motion for sanctions if Defendants
27 did not comply with the order compelling discovery responses. (*Id.*). But Plaintiffs' counsel
28 asserts that, after multiple requests, Defendants still would not provide the responses or respond

1 regarding fees. (*Id.* at 4-5). Plaintiffs then filed this motion, to which Defendants did not
2 respond.

3 **II. Discussion.**

4 The Court grants Plaintiffs' motion for sanctions in part and denies it in part. Under
5 Federal Rule of Civil Procedure 37(b)(2)(A), if a party fails to obey an order to provide
6 discovery, the court may "issue further just orders." These include "rendering a default judgment
7 against the disobedient party." Fed. R. Civ. P. 37(b)(2)(A)(vi). Under Local Rule 7-2(d), the
8 failure of an opposing party to file points and authorities constitutes a consent to the granting of
9 the motion. Additionally, while parties may represent themselves *pro se*, it is a longstanding rule
10 that corporations must appear in court through an attorney. *See Computerized Screening Inc. v.*
11 *LifeClinic International, Inc.*, No. 3:09-cv-00465-RCJ (WGC), 2012 WL 13069792, at *2 (D.
12 Nev. Sept. 24, 2012) (citing *D-Beam Ltd. P'ship v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-
13 74 (9th Cir. 2004)). "[T]he Ninth Circuit has expressly recognized that default may be entered
14 against an artificial entity for failing to retain counsel." *Arvik Platinum, Inc. v. DM & Associates,*
15 *Inc.*, No. 2:11-cv-01240-GMN, 2012 WL 6021330, at *1 (D. Nev. Dec. 3, 2012) (citing *United*
16 *States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993)).

17 Here, the Court grants in part and denies in part Plaintiffs' motion. Defendants have
18 failed to comply with the Court's order compelling discovery, warranting sanctions under Rule
19 37. They have also failed to respond to Plaintiffs' motion, constituting their consent to the Court
20 granting it. However, because they are proceeding *pro se*, the Court will not grant Plaintiffs'
21 requested relief of case ending sanctions. Instead, it grants Plaintiffs' request that it issue an
22 order to show cause.

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24 **IT IS THEREFORE ORDERED** that Plaintiffs' motion for sanctions (ECF No. 52) is
25 **granted in part and denied in part.** The Court denies Plaintiffs' request that it enter case
26 terminating sanctions. The Court grants Plaintiffs' request that it enter an order to show cause.

27 **IT IS FURTHER ORDERED** Defendants must show cause why they have failed to
28 comply with the Court's order compelling discovery responses (ECF No. 42) and why the Court

1 should not recommend² case ending sanctions. Additionally, Defendants must show cause why
2 the Court should not recommend that default be entered against EnvyTV, LLC for failing to
3 retain counsel. Defendants must respond to this order with an explanation regarding: (1) why
4 they have not provided the discovery responses compelled by this Court's order at ECF No. 42;
5 (2) why they have not attempted to agree with Plaintiffs on appropriate attorneys' fees the Court
6 awarded in that order; (3) why the Court should not recommend case ending sanctions for these
7 violations; and (4) why the Court should not recommend that default be entered against EnvyTV,
8 LLC for failing to retain counsel. Defendants must file this explanation by **July 21, 2022**.

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10 DATED: June 21, 2022

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12 DANIEL J. ALBREGTS
13 UNITED STATES MAGISTRATE JUDGE
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26 ² This matter is currently referred to the undersigned magistrate judge. Because motions for case
27 ending sanctions and default judgment are the type of motions the undersigned may not finally
28 determine under 28 U.S.C. § 636(b)(1)(B), the magistrate judge must issue a recommendation to
the assigned district judge for disposition of these motions under Local Rule IB 1-4.